

## MESSAGE FROM THE GOVERNOR.

Executive Office, State of Texas,  
Austin, April 8, 1895.

To the Senate:

Senate bill No. 204, being an act to authorize the Houston East and West Texas Railway Company, a railroad corporation organized under the laws of this State, to lease, operate, maintain and control for the term of ninety-nine years the Houston and Shreveport Railroad, a railway situated in the State of Louisiana and operated in the name of a corporation organized under the laws of that State, is herewith returned without approval. The bill is believed to be in violation of section 6, article 10, of our Constitution, for the reasons given in the opinion of the Attorney-General, to whom the legal question was submitted, as follows:

"I am in receipt of your favor of yesterday, in which you ask for an opinion as to whether an act of the Legislature authorizing a railway corporation of this State to lease the franchises, rights and privileges of a railway corporation organized under the laws of another State, for the period of ninety-nine years, contravenes article 10, section 6, of our Constitution.

"The language of the section of the Constitution referred to is as follows: 'No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State or of the United States.' The language of the Constitution itself, I think, clearly prohibits the Legislature from authorizing a railway corporation of this State to lease the franchises, rights and property of a railway corporation organized under the laws of another State for such a long period of time. The purpose of the lease is evidently to consolidate the two lines of railroad.

"The word 'consolidate,' as used in this connection, is used in the sense of join or unite. *State v. A. N. R. R. Co.*, 24 Neb., 164. A lease for such a long period of time will as effectually unite and join these two lines of railroad, and thereby consolidate them, as would an absolute sale, whether private or judicial.

"The Supreme Court of Nebraska, in construing a similar provision of the Constitution of that State, uses the following language: 'This is an absolute prohibition against a railroad corporation consolidating its stock, property, franchises and earnings \* \* \* with any other railroad corporation owning a parallel and competing line. The word consolidate is here used in the sense of join or unite. The constitutional convention aimed at practical results; the character of the title and the

parties operating the road is of little moment to the general public. \* \* \* The law cannot be evaded, therefore, by substituting a lease for a deed of conveyance. \* \* \* The prohibition against the joinder of these prohibits the leasing of such roads.'

"The authorities hold and treat a sale for such a long time as practically one and the same thing; they denominate a lease as a temporary alienation. 4 Am. and Eng. Ency. of Law, 219; *Dana v. Bank of U. S. W. & S. (Penn.)*, 223.

"When our constitutional convention said that a railroad corporation organized under the laws of this State 'shall not consolidate by private or judicial sale or otherwise, with any other railroad company organized under the laws of any other State or of the United States,' it absolutely inhibited any such consolidation. The term 'by private or judicial sale or otherwise' includes every method of consolidation that the ingenuity of man can invent. That a lease of ninety-nine years is practically a consolidation of those two corporations is clear. That our courts regard it as a consolidation may be inferred from many authorities which hold that such a lease as the one now being considered is practically a dissolution of the leasing corporation and a surrender of its franchises and the merging of itself into the lessee corporation. That conclusively shows that by a lease of the kind enquired about the consolidation would be complete.

"The Nebraska constitution prohibited the consolidation of parallel and competing lines of railroad, but it will be noted that section 6 of article 10 of our Constitution can not be restricted to parallel and competing lines; it says that 'No railroad company organized under the laws of this State shall consolidate, by private or judicial sale, with any railroad company organized under the laws of any other State or of the United States.' It is not necessary therefore for them to be parallel or competing lines to come within the constitutional inhibition.

"It seems therefore that the Legislature would have no authority to authorize such a consolidation, although it might appear to that body and to every other person that such consolidation would be beneficial to the public and to the corporations themselves."

In addition to the authorities cited reference is made to the following, which support the view that this lease is tantamount to a sale or consolidation:

1 Beach on Railways, sec. 535.

*R. R. Co. v. R. R. Co.*, 118 U. S., 313.

C. A. CULBERSON.